DOCKET

PROCEEDINGS AND ORDERS DATE: 030685

CASE NBR 84-1-05720 CSX
SHORT TITLE Gregory, Cindy DOCKETED: Nov 7 1984
VERSUS Pittsfield, et al.

Date	Proceedings and Orders
Nov 7 1984	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
Dec 3 1984	Brief of respondents Pittsfield, et al. in opposition filed.
Dec 6 1984	DISTRIBUTED. January 4, 1985
Jan 7 1985	REDISTRIBUTED. January 11, 1985
Jan 14 1985	REDISTRIBUTED. January 18, 1985
Feb 1 1985	REDISTRIBUTED. February 15, 1985
Feb 19 1985	REDISTRIBUTED. February 22, 1985
Feb 25 1985	Petition DENIED. Dissenting opinion by Justice O'Connor with whom Justice Brennan and Justice Marshall join. (Detached opinion.) Justice Powell OUT.
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PETITION FOR WRIT OF CERTIORARI

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84-5720

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1984 TERM

CINDY GREGORY,

PETITIONER

VS.

TOWN OF PITTSFIELD

AND

GENE MOYERS,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE MAINE SUPREME JUDICIAL COURT

Linda Christ
Solomon Goldman
Pine Tree Legal
Assistance, Inc.
39 Green Street
P. O. Box 2429
Augusta, Maine 04330
(207) 622-4731

Harold L. Lichten
Tureen & Margolin
178 Middle Street
Suite 301
P. O. Box 4834
Portland, Maine 04112
(207) 773-7166

Robert Edmond Mittel
Mittel & Hefferan
178 Middle Street
P. O. Box 427
Portland, Maine 04112
(207) 775-3101

QUESTIONS PRESENTED

I. WHETHER A QUALIFIED APPLICANT FOR A STATUTORY ENTITLEMENT HAS A RIGHT TO NOTICE AND AN OPPORTUNITY TO BE HEARD UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

II. WHETHER UPON A MUNICIPALITY'S DENIAL OF A STATUTORY ENTITLEMENT, A MUNICIPAL POLICY OF REFUSING TO PROVIDE NOTICE OF ITS DECISION AND NOTICE OF THE RIGHT TO REVIEW DEPRIVES PETITIONERS OF DUE PROCESS OF LAW UNDER PARRATT V. TAYLOR, 451 U.S. 527 (1981).

PARTIES TO THE PROCEEDING

The parties to this action are: Cindy Gregory, Plaintiff/Peticioner; Town of Pittsfield, Defendant/Respondent; Gene Moyers, individually and in his official capacity as Town Manager, Defendant/Respondent; Maine Municipal Association, Amicus Curaie/Respondent; State of Maine, Amicus Curaie/Respondent.[1/]

1/ Tim Gregory was a plaintiff below and is not a party to this Petition for Writ of Certiorari.

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OPINION BELOW

The opinion of the Maine Supreme Judicial Court was reported by the Reporter of Decisions as Decision No. 3578, Law Docket No. SOM-84-35, decided August 13, 1984. The decision is officially reported at 479 A.2d 1304 (Me. 1984).[2/]

2/ The decision is attached in Appendix 1.

JURISDICTION

This petition seeks review of the decision of the Maine Supreme Judicial Court in Cindy Gregory, et al. v. Town of Pittsfield, et al., 479 A.2d 1304 (Me. 1984). The judgment was dated and entered on August 13, 1984. Jurisdiction is conferred upon this Court by 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional and statutory provisions, which are set forth in Appendix 4: the Fourteenth Amendment to the United States Constitution; 42 U.S.C. §§ 1983 and 1988; 22 M.R.S.A. §§ 4450, 4504 and 4507.

STATEMENT OF THE CASE

The Respondent Town of Pittsfield is required by state law to operate a general assistance program and does so pursuant to an ordinance which establishes standards for eligibility and the procedures for application, decision making, and administrative appeals. 22 M.R.S.A. §§ 4450, 4504 and 4507; Pittsfield Code, Chap. 2B. See Appendix 4.

The Gregory family had received assistance for several weeks prior to April 13, 1982. On that date Cindy Gregory returned to the town office to apply for assistance and her request for assistance was denied. The town did not give her a written notice of its decision.[3/] The Superior Court subsequently found, based on the testimony of town officials and employees, that it was the town's policy not to give to claimants notice of the decision and not to give them notice of their right to review. Superior Court Decision and Order of February 11, 1983, p. 6. See, Appendix 2.

3/ The statute and ordinance require that notice of the decision be given and that it describe the right to review. The Town of Pittsfield had also entered into a Consent Decree two years earlier in a class action whereby the town and its officers agreed to provide to all general assistance applicants a written decision regarding the application, containing a detailed notice of the right to review and of the review and hearing procedures. Grass v. Commissioner of the Department of Human Services, C.A. Docket No. 79-31-SD (Me. 1980).

The Gregorys returned to the town office on April 23rd and completed an application for assistance. The family was faced with imminent eviction, and was in need of food, diapers and supplies for their three young children. The Superior Court found that on April 23rd the Gregorys' application was denied, but that the town once again failed to give notice of its decision and failed to give notice of the right to review. Superior Court Decision and Order of February 11, 1983, p. 5; See, Appendix 2.

The Gregorys, by counsel, requested a hearing from the town based on the April 23rd denial, but their request for a hearing was formally denied. Superior Court Decision and Order of February 11, 1983, p. 6; See, Appendix 2.

The Petitioner filed a civil action against the town and against Gene Moyers in both his individual and his official capacity alleging that numerous actions and omissions of the Respondents were in violation of the Fourteenth Amendment to the United States Constitution and of state law.[4/] The Superior Court in its Decision and Order of February 11, 1983 granted Petitioner's motion for partial summary judgment and ruled that the town's conduct was violative of the general assistance statute, and held further that the Respondents' policy of failing to give notice of the decision and of the right to review, and Respondents' refusal to schedule a hearing on request, was in violation of the due

4/ The Superior Court held that the town violated the general assistance statute, 22 M.R.S.A. §§4450 et seq., in that the town denied assistance on grounds unrelated to financial need, failed to give notice of its decision, and failed to grant a hearing on request.

process clause and that the Gregorys were entitled to a hearing on damages.[5/] Respondents subsequently moved for reconsideration of the decision in light of the decision in Jackson v. Inhabitants of the Town of Searsport, 456 A.2d 852 (Me. 1983), cert. denied ___ U.S. ___, 104 S. Ct. 95 (1983) which interpreted Parratt v. Taylor, 451 U.S. 527 (1981) to foreclose the procedural due process challenge of a general assistance claimant on the ground that the state already provided the process that was due through judicial and administrative review. In an order entered July 21, 1983 the Superior Court amended the earlier order and granted the Respondents' Motion for Summary Judgment as to the Gregorys' claim that their due process rights had been violated. On appeal Maine's Supreme Judicial Court upheld the decision of

5/ The Gregorys made the following claims in Superior Court which are relevant to their claim for damages: that when Mrs. Gregory's application was denied in April 1982, when she was not given notice of the right to appeal, she was also informed that she would not receive general assistance until a sexual harassment complaint which she filed earlier in the week with the town's chief of police was "settled." Two consecutive requests for a hearing were refused. The family, with three young children (two of them infants), was repeatedly threatened with eviction during this two week period, and was in need of food, diapers, and alternate shelter. Mrs. Gregory was then left with no alternative but to hitchhike alone at night to another town in order to find transportation for the family to the home of a relative, where the family was forced to move. They slept on the floor of a house with no running water. Mrs. Gregory, within two weeks after her second hearing request was formally denied, appeared at a public hearing to speak in opposition to a proposed amendment to the general assistance ordinance which she believed was intended to affect her family. The town council, in public, informed her that she was not permitted to speak. The Gregory family, which had considered Pittsfield their home, was forced to relocate elsewhere as a result of the Respondents' unconstitutional conduct.

the Superior Court and held that general assistance applicants had no property interest in benefits, and even if a property interest was at stake, under Parratt v. Taylor, the theoretical availability of judicial review was sufficient to satisfy the due process clause.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW SIGNALS A DRAMATIC DEPARTURE FROM THIS COURT'S WELL ESTABLISHED STANDARDS FOR ANALYZING WHETHER AN APPLICANT FOR A STATUTORY BENEFIT HAS A PROPERTY INTEREST AT STAKE, AND CONFLICTS WITH DECISIONS OF FEDERAL CIRCUIT COURTS.

The decision of the Supreme Judicial Court threatens the entire foundation of the due process clause which protects all citizens who seek assistance from governmental bureaucracies. This Court held in 1908 that taxpayers are entitled to notice and the opportunity to be heard prior to the final assessment of a tax, Londoner v. City and County of Denver, 210 U.S. 373 (1908), and held in 1926 that an applicant for admission to practice before the Board of Tax Appeals was entitled under the due process clause to notice and the opportunity for a hearing. Goldsmith v. United States Board of Tax Appeals, 270 U.S. 117 (1926). A writ of certiorari should be granted both because the decision of the court below dramatically restricts the types of property interests which until now have been found entitled to protection under the Fourteenth Amendment, and because the court's interpretation of Parratt v. Taylor will result in the elimination of minimal procedural safeguards at the administrative level whenever any form of judicial review is theoretically available. The decision of the Supreme Judicial Court is

inconsistent with long standing precedent applying the due process clause and if followed will greatly constrict that provision's protections for those who deal with the government.

The Supreme Judicial Court held that applicants have no property interest in general assistance benefits despite the fact that general assistance is a mandatory statutory entitlement program. 22 M.R.S.A. §§ 4450 - 4508.[6/]

> In Maine a general assistance applicant has no property interest in benefits until he has been found qualified and eligible by the local authority responsible for administering the general assistance program. When a determination of eligibility has been made, the applicant has acquired an interest in the benefits. Without this determination, an applicant, no matter what his financial status, has no more than an abstract expectancy of benefits, which is no case can rise to the level of a constitutionally protected property right.

479 A.2d at 1308.

The lower court's decision is contrary to guidelines established by this Court in Hewitt, et al. v. Helms, ___ U.S. ___, 74 L.Ed. 2d 675 (1983), Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), Greenholtz, et al. v. Inmates of Nebraska Penal and Correctional Complex, et al., 442 U.S. 1 (1979), Board of Regents

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6/ The subsequent amendment of certain provisions of 22 M.R.S.A. §§ 4450 - 4508 did not alter the nature of the statutory scheme. 22 M.R.S.A. §§ 4301 - 4324 (Supp. 1983-1984).

v. Roth, 408 U.S. 564 (1972), and is inconsistent with the holdings of numerous courts of appeals which have considered the existence of property rights of those applying for various forms of government largess, including general assistance.[7/]

While a property interest itself is - for purposes of the Fourteenth Amendment - created by a source independent of the constitution such as state law, the court's analysis of the existence of that property interest must be consistent with the constitutional analysis employed by this Court in Board of Regents v. Roth and its progeny.[8/]

The rule is that where a statutory or regulatory scheme establishes conditions of entitlement or eligibility which substantially narrow the scope of the government officer's discretion, the scheme enables

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7/ The precise question raised in this case - whether applicants for general assistance benefits have a property interest at stake - has not yet been addressed by this Court, and at least one member of this Court has suggested that it deserves plenary consideration. Griffith v. Detrich, 603 F.2d 118 (9th Cir. 1979), cert. denied sub nom Peer v. Griffith, 445 U.S. 970 (1980). (Rehnquist, J., dissenting).

8/ For example, the Court's decision in Logan v. Zimmerman Brush Co. is significant as there this Court refused to adopt the conclusion of Illinois' highest state court that a citizen's state statutory right to use a state agency's adjudicatory procedures was not a species of property under Illinois law. Id. at 1134. Also, in Griffith v. Detrich the Ninth Circuit Court of Appeals declined to follow the reasoning of California's highest state court, which had held that the California statute did not create a property interest in general assistance applicants; the Ninth Circuit considered the state court's opinion, but held that the court failed to consider whether the state scheme created an entitlement within the meaning of Board of Regents v. Roth.

the applicant to ascertain whether or not s/he may legitimately claim to be entitled to participate in the program.[9/] In Hewitt, et al. v. Helms Justice Rehnquist, writing for the Court, observed that a state statutory scheme governing the administration of state prisons gave rise to a liberty interest in a prisoner to remain in the general prison population, where the terms of the statute were mandatory in nature, requiring that certain procedures be employed, and where the statute provided that administrative segregation would not occur except in certain specified circumstances. Accord, Greenholtz, et al. v. Inmates of Nebraska Penal and Correctional Complex, et al., supra. (language of parole statute which provides than an offender is eligible for release except in the case of four specified conditions creates a legitimate expectation of release entitled to some measure of constitutional protection). Such an applicant if s/he presents a colorable claim that satisfies the substantive requirements of state law, is entitled to claim a property interest in the benefits sought.

9/Maine's general assistance statutory and regulatory scheme leaves virtually no discretion to the municipal officer. The statute and ordinance establish standards of eligibility, 22 M.R.S.A. §4504, and state law provides that a municipality's program must be administered in accordance with an ordinance enacted after notice and public hearing, 22 M.R.S.A. §4504(1). The ordinance must establish standards of eligibility for benefits, and the standards must meet certain statutory requirements. The state statute requires the municipality to post a notice which states that the ordinance shall be available in the town office and shall be easily accessible to any member of the public. 22 M.R.S.A. §4504(2). Respondent Town of Pittsfield had adopted a detailed general assistance ordinance which established eligibility criteria and the Petitioner was ultimately determined to be eligible under that ordinance. Appendix 4.

The decision of the court below is contrary to those cases and to the decisions of several federal circuit courts - and numerous federal district courts - which have recognized that general assistance applicants possess a legitimate claim of entitlement sufficient to invoke the protections of the due process clause.[10/] These cases are consistent with those court decisions which have recognized that applicants for various forms of government largess who claim that they meet the statutory requirements therefor may possess a protected property interest in the benefits which are sought, of which a person can be deprived only with the procedural protections of due process of law.[11/]

10/ Griffith v. Detrich, supra, (9th Circuit); White v. Roughton, 530 F.2d 750 (7th Cir. 1978); Johnston v. Shaw, 556 F. Supp. 406 (N.D. Tex. 1982); Meyer v. NIles Township, Ill., 477 F. Supp. 357 (N.D. Ill. 1979); Custom v. Trainer, 74 F.R.D. 409 (N.D. Ill. 1977); Custom v. Quern, 482 F. Supp. 1000 (N.D. Ill. 1980); Alexander v. Silverman, 356 F. Supp. 179 (E.D. Wisc. 1973); Baker-Chaput v. Cammett, 406 F. Supp. 1134 (D.N.H. 1976); Barnett v. Lindsey, 319 F. Supp 610 (D. Utah 1970); Sims v. Juras, 313 F. Supp. 1212 (D.C. Ore. 1969); Garcia, et al. v. Silverman, et al., 393 F. Supp. 590 (E.D. Wisc. 1975). But see, Jackson v. Inhabitants of the Tow of Searsport, Me., 456 A.2d 852 (1983) cert. denied, __ U.S. __, 104 S. Ct. 95 (1983); Zobriscky v. Los Angeles County, 28 Cal. App. 3d 930; 105 Cal. Rptr. 121 (1972). (The analysis used and the result reached in Zobriscky were explicitly rejected by the Ninth Circuit Court of Appeals, which subsequently held, in Griffith v. Detrich, that the California general assistance statute in fact created a property interest for applicants.)

11/ Roy v. City of Augusta, et al., 712 F.2d 1517 (1st Cir. 1983)(applicant for renewal of occupancy permit); Ressler v. Pierce, 692 F.2d 1212 (9th Cir. 1982) (applicant for subsidized housing); Davis v. Ball Memorial Hospital, 640 F.2d 30 (7th Cir. 1980) (applicant for Hill Burton hospital care); Grueschow v. Harris, 492 F. Supp. 419, aff'd 633 F.2d 1264 (8th Cir. 1980)(applicant for federal fuel assistance benefits); Raper v. Lucy, 488 F.2d 748 (1st Cir. 1973)(applicant for drivers license); Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964)(applicant for liquor license)

The decision in this case would result in the destruction of the constitutionally required procedural rights which are presently afforded to applicants for various forms of statutory entitlements. Those procedures have been guaranteed since the first decade of this century and were applied to general assistance by this Court's decision in Goldberg v. Kelly, 397 U.S. 254 (1970). If the decision below is left intact, the state, its municipalities and the bureaucrats who work for each will be free to ignore the constitutional protections now available to applicants for general assistance, and for building permits, drivers licenses, and licenses to engage in various types of business. Citizens with important rights at stake could therefore be subjected to wholely arbitrary bureaucratic decision making, without the constitutionally required minimal procedural safeguards of notice and the opportunity to be heard.

II. THE COURT BELOW ERRED IN CONCLUDING THAT PARRATT V. TAYLOR FORECLOSED PLAINTIFFS' DUE PROCESS CLAIMS, AND THE COURT'S DECISION CONFLICTS WITH FEDERAL CIRCUIT COURT DECISIONS.

The Gregorys claimed below that Respondents had violated the constitution by depriving them of property - benefits which they were qualified to receive under state law - without notice or an opportunity to be heard. Maine's Supreme Judicial Court held that because state law offered them notice and a hearing there was no due process violation. The state court implicitly held

that the town's policy of refusing to provide the notice and hearing which state law guaranteed was constitutionally irrelevant. This case thus presents the question of whether a town may adopt a policy of failing to provide applicants with notice of the town's decision and of the right to review and whether a town may refuse to grant a hearing after one is requested and still not run afoul of the due process clause of the United States Consitution.[12/]

The Supreme Judicial Court has completely misinterpreted the meaning of Parratt v. Taylor. It believes that the case holds that

> [W]here state law provides adequate redress to a plaintiff deprived of a constitutionally protected property interest no section 1983 action will lie.

479 A.2d at 1308. That, of course, is not what Parratt says because if it did Monroe v. Pape, 365 U.S. 167 (1961) would have to be overruled.

Rather, Parratt stands for a much more narrow proposition. In a situation where the state deprives an individual of property, the due process clause does not require the state to provide a prior hearing before that deprivation if there is in place an adequate state post-deprivation procedure to remedy the taking. Since this case is not about the existence or non-existence of a prior hearing but rather about the

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12/ The Petitioner does not claim that the failure to follow state mandated procedures ipso facto violates the due process clause, but rather that due process requires notice and the opportunity to be heard.

adequacy of the notice that the defendant provided, Parratt has no application.

The doctrine announced in Parratt is inapplicable where a statutory scheme creates both an entitlement to benefits and a system of administrative review, in circumstances where local officials systematically and indeed deliberately fail to comply with the notice and hearing requirements which are mandated not only by state and local law, but independently by the due process clause. Particularly where the town adopts a policy of not providing notice of its decision and of the right to review, the theoretical possibility of judicial review can never provide the process which is "due" under the Fourteenth Amendment, as the first element of meaningful process is the notice itself. The state law requirements of notice and hearing are irrelevant in a case against town officials who themselves refused to provide the notice and hearing which are constitutionally required.

The decision of the Supreme Judical Court is in conflict with decisions of several courts of appeals. While no post-Parratt cases have squarely decided this precise issue, numerous cases suggest that if a state or local agency fails to afford citizens essential elements of procedural due process, such as notice and the opportunity for a hearing, the mere availability of judicial review will not provide the process which

is constitutionally required.[13/]

The Parratt decision instructs that its reach is narrow and should not apply to cases where "process" could realistically be offered prior to the deprivation or denial of the citizen's property interest. A review of pre-Parratt decisions led to the Court's conclusion that, particularly where the deprivation occurred as a result of an established state procedure ". . . due process was held to require predeprivation notice and hearing in order to serve as a check on the possibility that a wrongful deprivation would occur." Id, at 538. The Court distinguished these cases from those where, either because of ". . . the necessity of quick action by the State or the impracticality of providing any meaningful predeprivation process . . ." a post deprivation remedy will suffice, so long as there exists "some meaningful means by which to assess the propriety of the State's action at some time after

13/ Schultz v. Baumgart, 738 F.2d 231 (7th Cir. 1984) (where police officer is discharged without being afforded proper notice and opportunity for hearing, due process rights have been violated as under such circumstances pre-deprivation process can realistically and practically be afforded; availability of post-discharge arbitration procedure is therefore irrelevant); Cohen, et al. v. City of Philadelphia, et al., 736 F.2d 81,87 (3rd Cir. 1984); Roy v. City of Augusta, et al., 712 F.2d 1517 (1st Cir. 1983); Creative Environments, Inc. v. Estabrook, 680 F.2d 822 at 832, n. 9, and 833 (1st Cir. 1982), cert. denied, 459 U.S. 989 (1982)(at least when proceedings before zoning board are "not tainted with fundamental procedural irregularity," an agency's violation of state substantive law will not give rise to a cause of action under Section 1983; here the plaintiffs had full access to public administrative hearings and review proceedings, and no procedural violations took place). But see, Campbell v. Shearer, 732 F.2d 531, petition for reh. denied ___ F.2d __, (6th Cir. 1984) (where plaintiff alleged that the seizure of his property under the state jeopardy sales tax assessment statute without affording him the required hearing was unconstitutional, the availability of judicial review in state court satisfies due process; see dissenting opinion of Holschuh, J.)

the initial taking." Id, 539. Accord, Logan, supra, at 436.[14/]

In Parratt the court observed that the state could not, as a practical matter, provide a meaningful hearing before the deprivation - the loss of the hobby kit - took place. However, where state and local law create an entitlement and establish a procedure for providing process in the form of notice and the opportunity for a hearing, then the process can realistically be offered prior to the denial or deprivation, and Parratt v. Taylor is therefore inapplicable.[15/]

14/ This Court's recent decision in Hudson v. Palmer, __U.S. __, 52 U.S. L.W. 5052 (July 3, 1984), extending the reach of Parratt v. Taylor to encompass the intentional destruction of a prisoner's property during a shakedown search, does not suggest a contrary result. Both Hudson and Parratt involved the necessity of a prior hearing before the deprivation if there was an adequate post-deprivation procedure to remedy the taking. The present case involves the adequacy of the notice.

Further, this case is unlike Hudson and Parratt as both involved random and unauthorized conduct, and this Court therefore held in Hudson that it was just as impracticable to afford predeprivation process where the conduct was intentional as when the conduct was negligent as the State in any event could not anticipate and control the employee's actions. The present case involves the existence of an established municipal policy in the context of a statutory entitlement scheme, and the provision of notice and hearing in this context is clearly practicable. This case involves a deprivation pursuant to an established municipal procedure, and as was the case in Logan, postdeprivation judicial remedies will not satisfy due process under such circumstances.

15/ The available state judicial remedies will not only fail to provide the process due - timely notice and an immediate hearing - but they will also leave the Gregory family without compensation for the substantial damage which they have suffered as a direct result. Under 42 U.S.C. §1983 plaintiffs are entitled to provide evidence that they suffered actual damages, including mental and emotional distress, as a result of the deprivation of process. Carey v. Piphus, 435 U.S. 247, 263 (1978).

A. A Town Policy of Failing to Provide Notice Violates the Due Process Clause

The fundamental requirement of notice of the government's decision and notice of the right to further review has long been recognized as a minimal prerequisite under the due process clause. Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950); Roller v. Holly, 176 U.S. 398, 409 (1900); Baldwin v. Hale, 68 U.S. 223 (1863).

In a statutory entitlement scheme such as Maine's general assistance program, the statutory requirement provides the only sort of process which will be constitutionally valid under the circumstances: notice. Where the government pursues a policy of not providing notice of the right to review, there is no subsequent judicial proceeding which is capable of furnishing process which is appropriate to the deprivation which has occurred. The mere fact that administrative and judicial review is theoretically available is of no practical benefit whatsoever to the citizen, who has been deprived of notice of the right to review. As far as the individual is concerned the decision is final and unreviewable. In Mullane this Court held that in order to be constitutionally valid, notice must be meaningful and must be reasonably calculated to apprise interested parties of the nature of the action and of the opportunity to present their objections. Id, at 314. Accord, Goldberg v. Kelly, 397 U.S. 254 (1970)(due process requires that notice be given prior to the deprivation of AFDC and New York City Home Relief benefits).

B. An Official's Refusal to Grant an Applicant a Hearing Upon Request Violates the Due Process Clause

While the due process clause is flexible as to the form of the hearing which is required, the requirement that a hearing actually be held has never been open to question.[16/]

The subsequent availability of judicial review does not provide the sort of process which is constitutionally required to remedy the deprivation. In order to be meaningful for a general assistance applicant, the hearing must be actually available and must be immediately available. General assistance is a program of last resort; only those "unable to provide the basic necessities essential to maintain themselves and their families" receive general assistance benefits. 22 M.R.S.A. §4450(2). Because qualified families seeking general assistance benefits often have no other means of paying for food and shelter their situation is typically desperate and the opportunity for an immediate hearing is essential.[17/]

This Court held in Memphis Light, Gas and Water Division, et al. v. Craft, et al., 436 U.S. 1 (1978)

16/ Much of the controversy surrounding the hearing requirement has involved the time of the hearing, i.e., whether it must be provided before or after the deprivation has occurred. E.g., Mathews v. Eldridge, 424 U. S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The Gregorys did not seek a predeprivation hearing, but merely sought an opportunity to present evidence in support of their claim of entitlement.

17/ Petitioner does not contend that due process necessarily requires the full and formal hearing which is mandated by state law, 22 M.R.S.A. §4507, but merely that it requires some form of meaningful administrative hearing which is immediately available.

that judicial remedies were inadequate to satisfy due process in the context of municipal utility termination proceedings and that pretermination notice and hearing were therefore required, as the cessation of utility service for any length of time causes a hardship. Further:

> Equitable remedies are particularly unsuited to the resolution of factual disputes typically involving sums of money too small to justify engaging counsel or bringing a lawsuit. An action in equity to halt an improper termination, because it is less likely to be pursued and less likely to be effective, even if pursued, will not provide the same assurances of accurate decision-making as would an adequate administrative procedure.

Id., at 1566-7.

A writ of certiorari should be granted by this Court to prevent the unjust and far reaching results of the decision of Maine's Supreme Judicial Court. The decision would result in the elimination of the most basic procedural rights which citizens have a right to rely on when dealing with government agencies. To hold that officials could adopt policies of denying notice and hearing rights will have two immediate results. First, it will dramatically reduce the check on the abuse of discretion by government bureaucrats, who will be able to make important decisions concerning the lives of citizens without being accountable to a system of administrative review. Second, because citizens may resort to judicial review, the courts may be beseiged by complaints which are more properly resolved in an administrative proceeding.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Maine Supreme Judicial Court.

DATED: November 5, 1984

Respectfully submitted,

Linda Christ
Counsel for Petitioner

APPENDIX I

MAINE SUPREME JUDICIAL COURT

Reporter of Decision
Decision No. 3578
Law Docket No. Som-84-35

CINDY GREGORY et al.

v.

TOWN OF PITTSFIELD et al.

Argued June 20, 1984
Decided August 13, 1984

Before McKUSICK, C.J., and NICHOLS, ROBERTS, WATHEN, GLASSMAN, and SCOLNIK, JJ.

McKUSICK, C.J.

Plaintiffs Cindy and Tim Gregory brought an action in Superior Court (Somerset County) that, inter alia, claimed, pursuant to 42 U.S.C. § 1983 (1981), that defendants Town of Pittsfield and its town manager violated their federal constitutional rights to procedural due process in that the Town denied the Gregorys general assistance benefits without adhering to Maine's statutory procedures. Plaintiffs also sought attorney's fees under 42 U.S.C. § 1988 (1981). They now appeal from the Superior Court's summary judgment dismissing both claims with prejudice. We deny the appeal.

I.

At the time of the events in question plaintiffs resided at the Carriage Inn Motel in Pittsfield with their three young children. Cindy worked as a maid in the motel while her husband looked after the children. In March 1982 the Gregorys twice

received general assistance benefits from the Town of Pittsfield in the form of "food orders." On April 6, 1982, Cindy Gregory applied for general assistance in the form of a rent payment. At that time she told the town clerk that she would soon receive her $301 check under the Aid to Families with Dependent Children (AFDC) program and asked whether she could use that check to pay a $300 traffic fine, for which her husband had been jailed, without risking her eligibility for rent assistance. Cindy was advised to return the next day for an answer, since the clerk needed to consult with the town attorney on the matter. The attorney advised that the decision of what to do with the AFDC check was Mrs. Gregory's but that the rent assistance should be given. Mrs. Gregory was so informed when she returned on the 7th and was granted the rent assistance. She paid her husband's fine with the AFDC money.

On April 13, 1982, Mrs. Gregory again requested weekly rent assistance and spoke with the new town manager, Gene Moyers. She informed Moyers and the town clerk that on the advice of her parole officer, she had quit her job as some of her duties were possible parole violations. Moyers denied her April 13th request for general assistance, filing a "Notice of General Assistance Decision," which stated the grounds to be that Mrs. Gregory had quit her job and had spent her AFDC check on her husband's fine rather than on the children and other family needs. However, no written notice of the decision was sent to the Gregorys.

On Friday, April 16, 1982, Cindy Gregory and Gene Moyers met to discuss the denial. Moyers advised Mrs. Gregory

to return on the following Tuesday and pursue the fair hearing procedure. She did not return the next Tuesday, but rather on Friday, April 23, 1982, plaintiffs filed the present action in Superior Court. In this action, the Gregorys sought a temporary restraining order (TRO) against the Town's denial of general assistance, and also, in addition to various claims under state law, sought relief under 42 U.S.C. § 1983 on the ground that defendants had violated plaintiffs' fourteenth amendment rights to due process. In connection with the latter claim, plaintiffs sought attorney's fees pursuant to 42 U.S.C. § 1988 (1981).

On the morning of April 23 a Superior Court justice heard the Gregorys' motion for a TRO and denied the same on the ground that they had made no showing of irreparable harm. The court believed that the Gregorys were protected against the threat of eviction by their landlord by state law prohibiting unlawful evictions. The court directed the Gregorys to exhaust the administrative hearing procedure and instructed the "Fair Hearing Authority" of the Town to follow this court's decision in Page v. City of Auburn, 440 A.2d 363 (Me. 1982), which held that voluntary termination of employment is not a valid ground for denying an applicant general assistance benefits. The Gregorys immediately informed their landlord of the Superior Court's decision. The landlord, however, told the Gregorys that he still planned to evict them. Late in the day, the Gregorys contacted the court and attempted to schedule a hearing on their oral request for a TRO against the landlord's evicting them, but the court advised

them that a hearing was not immediately possible. Also on April 23 the Gregorys went to the town office, where they requested a fair hearing on the denial of their April 13 request for general assistance. At that time they completed another application for assistance, which was denied. On the next day, Saturday the 24th, the Gregorys moved from the Carriage Inn Motel in Pittsfield to Eddington, where Cindy's father lived.

On April 29, 1982, a fair hearing was held reviewing the April 13 denial of assistance. The Town's Fair Hearing Authority declined to follow Page and upheld the denial because Mrs. Gregory had quit her job and failed to use benefits and resources to reduce the need for general assistance. On May 12, 1982, Moyers refused the Gregorys' request for a fair hearing on the denial of their April 23 request for assistance.

By an order dated February 11, 1983, the Superior Court ruled on the then remaining claims presented by plaintiffs' complaint. The court remanded the issue of the April 13 denial to the Fair Hearing Authority with instructions to grant the requested assistance. It also ordered the Fair Hearing Authority to determine plaintiffs' need as of the April 23 application and grant aid accordingly. The court further granted summary judgment in plaintiffs' favor on their claim that defendants' failure to make written decisions within 24 hours of the date of their applications for assistance, as prescribed by 22 M.R.S.A. §§ 4504(3)(c), 4505 (1980), and defendants' failure to hold a fair hearing within seven days of a request therefor, pursuant to 22

M.R.S.A. § 4507 (1980),[1] violated plaintiffs' federal due process rights. A damages hearing on that claim was to be scheduled later. Then on May 12, 1983, defendants filed a motion entitled "Motion for Judgment and Dismissal," seeking reconsideration of the federal due process portion of the court's February 11 order in light of our decision in Jackson v. Town of Searsport, 456 A.2d 852 (Me. 1983), issued on February 18, 1983. On July 22, 1983, the Superior Court reversed its earlier ruling and granted summary judgment for defendants as to plaintiffs' procedural due process claim, dismissing that claim with prejudice.[2] From that judgment plaintiffs now appeal.

II.

At the time of the events in question, 22 M.R.S.A. §§ 4450-4508 (1980)[3] comprised the state statutory scheme for administering general assistance programs in Maine. In addition, each Maine municipality was, and still is, required to enact a comprehensive general assistance ordinance supplementing the state statute. See 22 M.R.S.A. § 4504(1) (1980).[4] All general assistance programs in Maine are thus run with reference to both the

1. 22 M.R.S.A. §§ 4450-4508 were repealed and replaced by P.L. 1983, ch. 577, § 1 (effective September 23, 1983) (current version at 22 M.R.S.A. §§ 4301-4324 (Supp. 1983-1984)).

2. All of the other numerous claims stated in the Gregorys' complaint, as amended, were either adjudicated by the Superior Court or voluntarily dismissed pursuant to M.R. Civ. P. 41(a)(1). Following the Superior Court's February 11, 1983, decision, the Town of Pittsfield provided plaintiffs the general assistance benefits that had originally been denied.

3. See note 1 above.

4. The current provision, 22 M.R.S.A. § 4305(1) (Supp. 1983-1984), is identical to section 4504(1).

state statute and a municipal ordinance.

General assistance benefits may come in the form of food, clothing, housing, heat, or medical care. Municipalities grant such benefits only for a specific time period as, for example, a week's allowance for food or rent. These benefits are granted to meet a specific need of the applicant and are to terminate when that need is met. General assistance is unlike other government aid programs in that each application for benefits requires a de novo determination of need. In contrast to AFDC, for example, general assistance benefits in a specific amount are not distributed at regular intervals, continuing until the recipient's economic status changes. Rather, general assistance is intended to meet a particular immediate need, and once that need is met the recipient must establish his need anew before he is entitled to later benefits.

Evaluation of plaintiffs' claim that defendants deprived them of procedural due process requires a two-part analysis:

> First, it must be determined if there has been a deprivation of an individual's life, liberty or property interests. Second, if such a deprivation has occurred, a determination must be made as to what process is due under the fourteenth amendment.

Jackson v. Town of Searsport, 456 A.2d at 856 (citing Ingraham v. Wright, 430 U.S. 651, 672 (1977)). The Gregorys argue that by virtue of their prior receipt of food orders and rent assistance (both forms of general assistance), they are continuing recipients of these benefits and have a "property" interest in them,

which is entitled to the fourteenth amendment protections of procedural due process.[5] This argument is without merit. In Board of Regents v. Roth, 408 U.S. 564 (1972), the United States Supreme Court made clear that the existence of a property interest in particular benefits is determined by reference to the state or local laws establishing such benefits:

> Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Id. at 577. See Goss v. Lopez, 419 U.S. 565, 572-73 (1975).

Maine's statutory scheme of the general assistance program precludes plaintiffs from holding a property interest in general assistance benefits on the basis of their prior receipt of those benefits. 22 M.R.S.A. § 4450(2), in effect at the time the instant dispute arose, provided that

> [a] general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that the person has need and is found to be eligible to receive general assistance.[6]

By this language, a continuing recipient of general assistance

5. This case is therefore distinguishable from Jackson v. Town of Searsport, 456 A.2d 852, 857 (Me. 1983), where the plaintiff claimed a property right in the statutory procedure itself.

6. The current provision, 22 M.R.S.A. § 4301(5) (Supp. 1983-1984), is identical to section 4450(2).

benefits is a statutory impossibility since eligibility for the benefits never "continues" but rather is determined de novo for each application. Prior receipt of general assistance benefits is of no consequence to a subsequent application since the applicant's immediate need is the sole criterion for decision. Thus, general assistance applicants are treated as first-time applicants no matter how many times they have received benefits in the past.

Neither do plaintiffs have a property interest in general assistance benefits as first-time applicants. In Roth, the Supreme Court wrote that "[t]he Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits." 408 U.S. at 576. In Maine a general assistance applicant has no property interest in benefits until he has been found qualified and eligible by the local authority responsible for administering the general assistance program. When a determination of eligibility has been made, the applicant has acquired an interest in the benefits. Without this determination, an applicant, no matter what his financial status, has no more than an abstract expectancy of benefits, which in no case can rise to the level of a constitutionally protected property right. See Zobriscky v. Los Angeles County, 28 Cal. App. 3d 930, 105 Cal. Rptr. 121 (1972) (due process guarantees need not be extended to general assistance applicants).

III.

Even if plaintiffs had a constitutionally protected property interest in general assistance benefits, the procedures available to them at state law were sufficient to satisfy the federal due process standard. Where state law provides adequate redress to a plaintiff deprived of a constitutionally protected property interest, no section 1983 action will lie. See Parratt v. Taylor, 451 U.S. 527, 538-44 (1981); Jackson v. Town of Searsport, 456 A.2d at 859. In Jackson we recognized the validity of this rule, whether the deprivation be the product of negligence as in Parratt or the product of intentional action as in Jackson. In Jackson, the plaintiff was denied an award of attorney's fees under 42 U.S.C. § 1988 because his federal procedural due process claim had failed.[7] We concluded that the procedural devices made available to the plaintiff by state law satisfied due process and precluded a section 1983 action.

An applicant who is denied general assistance in Maine has meaningful procedures available to rectify an erroneous decision. First, he or she has a right to an administrative "fair hearing" after the initial denial. See 22 M.R.S.A. § 4507. If still unsatisfied, the denied applicant may then seek direct

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7. Wyman v. Town of Skowhegan, 464 A.2d 181 (Me. 1983), a case in which attorney's fees were granted under 42 U.S.C. § 1988, does not detract from the holding of Jackson. In Jackson, the plaintiff could not recover attorney's fees because his only federal cause of action, a procedural due process claim, was denied in view of the adequacy of state remedies. In Wyman, however, the plaintiffs prevailed on federal equal protection and right to travel claims and were thus "prevailing parties" for section 1988 purposes.

Judicial review in the Superior Court pursuant to M.R. Civ. P. 80B. See id. Lastly, the applicant, if still unvindicated, has an appeal of right to the Law Court. Plaintiffs conceded at oral argument that they are not challenging the adequacy of the statutorily prescribed procedures. Rather, they allege that the failure of Pittsfield to follow those procedures deprived them of due process. We explicitly stated in Jackson, however, that general assistance applicants have no property interest in statutory procedures themselves. 456 A.2d at 857-58. Parratt and Jackson control this case and defeat plaintiffs' section 1983 claim.[8] Even if plaintiffs had a colorable property claim to general assistance benefits, the state law remedies available were adequate to compensate plaintiffs for their loss and satisfied the requirements of due process.

The entry is:

Judgment affirmed.

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8. Plaintiffs' contention that a section 1983 action must lie because under Maine law compensatory damages, punitive damages, and attorney's fees cannot be recovered under state law is without merit. In Parratt the Court specifically stated:

> Although the state remedies may not provide the respondent with all the relief which may have been available if he could have proceeded under § 1983, that does not mean that the state remedies are not adequate to satisfy the requirement of due process.

451 U.S. at 544. In Jackson we found the state remedy to be adequate even though attorney's fees could not be recovered under state law. The state law remedies available were adequate to compensate the Jackson plaintiffs' loss. See 456 A.2d at 859-60.

All concurring.

Attorney for the Plaintiffs:
Linda Christ, Esq. (orally)
Pine Tree Legal Assistance, Inc.
39 Green Street
P. O. Box 2429
Augusta, Maine 04330

Attorneys for the Defendants:
LOCKE, CAMPBELL & CHAPMAN
BY: Frank G. Chapman, Esq. (orally)
284 Water Street
Augusta, Maine 04330

James E. Tierney, Esq.
Attorney General, Amicus Curiae
Rufus E. Brown, Esq.
Deputy Attorney General
Susan P. Herman, Esq. (orally)
Assistant Attorney General
State House Station #6
Augusta, Maine 04333

Gary C. Wood, Esq.
Maine Municipal Association,
Amicus Curiae
Community Drive
Augusta, Maine 04330-9411

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STATE OF MAINE
SOMERSET, SS

RECD & FILED

FEB 15 1983

SOMERSET COUNTY
ESTHER L. WATTS

SUPERIOR COURT
CIVIL ACTION
Docket No. CV82-101

CINDY GREGORY, et al.

Plaintiffs

v.

INHABITANTS OF THE TOWN OF PITTSFIELD, et al.

Defendants

DECISION AND ORDER

This is an action brought pursuant to 22 M.R.S.A. § 4507 and M.R.Civ.P. Rule 80B, seeking review of the Pittsfield Fair Hearing Authority's decision denying general assistance benefits to the Plaintiffs. The complaint also alleges a cause of action for deprivation of constitutional rights under 42 U.S.C. § 1983. These matters are before the Court upon the Plaintiffs' motion for 80B review and motion for summary judgment. The 80B appeal deals primarily with those issues raised in Counts I, II, III, V, VI, VII and IX of the Plaintiffs' amended complaint. The motion for summary judgment raises those § 1983 issues contained in Counts IV, VIII and X of Plaintiffs' amended complaint.

STATEMENT OF FACTS

The Plaintiffs, Cindy and Tim Gregory, filed a general assistance application on April 13, 1982 seeking assistance in the amount of $65.00 to pay their weekly rental expenses. The application was denied by Gene Moyer, the Pittsfield General Assistance Officer on the grounds that Mrs. Gregory had voluntarily quit her job and that she had spent her AFDC check to

obtain her husband's release from jail rather than for the payment of rent. Written notice of this decision was not sent to the Plaintiffs.

On April 16, 1982 Mrs. Gregory appeared in person at the Municipal Office and again requested assistance. She was advised that assistance was being denied. Mrs. Gregory alleges that she was told that she would not be given general assistance until she had settled a complaint against a Pittsfield police officer which she had previously filed. Moyer claims that Mrs. Gregory was advised to appear at the Municipal Office on April 20, 1982 to establish a hearing date.

This action was commenced on April 23, 1982. A hearing on Plaintiffs' motion for temporary restraining order was held on that date and the motion was denied on the grounds that Plaintiffs had not exhausted their administrative remedies by proceeding with a fair hearing.

On April 23, 1982 Plaintiffs requested a fair hearing in writing. The Plaintiffs also filed a written application for general assistance. At about 5:00 p.m. the Plaintiff phoned the town manager and requested emergency assistance. Assistance was denied and Mrs. Gregory was advised to return on Monday, April 26. Moyer claims that assistance was denied because Mrs. Gregory advised him that she had enough food and diapers for the weekend. No written decision was given to the Plaintiffs. The Gregorys moved out of Pittsfield on April 24, 1982 and did not return on April 26.

A fair hearing was held on April 29, 1982. At the hearing, evidence regarding both the April 13 and April 23 applications

was received. The Fair Hearing Authority (FHA) denied the April 13 application on the grounds that Mrs. Gregory had voluntarily terminated gainful employment and had not utilized available resources to eliminate the need for assistance. The FHA made no decision on Plaintiffs' April 23 application.

In a letter dated May 7, 1982 Mrs. Gregory requested a fair hearing on the denial of her April 23 application. The request was refused on May 12, 1982.

On May 18, 1982 a hearing was held on a proposed amendment to the General Assistance Rules which would permit the town to deny general assistance where a person forfeits benefits from another program or refuses to utilize available resources to reduce need.[1] Mrs. Gregory attended the hearing and claims to have been denied the right to speak in opposition to the amendment. The amendment was adopted at the meeting.

I.

REVIEW PURSUANT TO RULE 80B

[1]Ordinance No. 82-13 provides:

"That the Town Code be amended under General Assistance (Chap 28) Section 104.4 by adding:

(c) When an applicant, without reasonable cause, refuses to utilize an available resource, subsequent applications will be denied.

When an applicant forfeits his/her receipt of benefits from another public assistance program because of an individual violation of the program's governing rules and regulations, they shall not be able to obtain a replacement of that forfeited assistance through any general assistance program. Any dependents of the applicants may still be eligible for assistance."

A. Denial of Bene...s

The first issue raised by the 808 appeal is whether the FHA's decision denying general assistance benefits to Plaintiffs is in accordance with the law and not arbitrary, capricious or unreasonable.

A general assistance program is a "service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families." 22 M.R.S.A. § 4450(2). Need is the exclusive criterion for eligibility for relief under a general assistance program. Beaulieu v. City of Lewiston, 440 A.2d 334, 345 (Me. 1982). "[T]he statutory scheme governing general assistance programs does not permit the municipality to deny aid to persons in need solely because they have voluntarily terminated their employment." Page v. City of Auburn, 440 A.2d 363, 365 (Me. 1982). Nor may assistance be denied on the ground that the applicant has misused available funds. Blouin v. City of Rockland, 441 A.2d 1008 (Me. 1982). The town must determine whether the applicant exhibits an immediate need of assistance and must provide assistance if such a need exists. Id. at 1009.

1. April 13, 1982 Application

There is no question that the Gregorys needed assistance when they filed their application on April 13, 1982. The FHA denied assistance on the ground that Mrs. Gregory had voluntarily quit her employment. Denial on this ground was improper. Page v. City of Auburn, supra. The FHA also denied assistance because the Gregorys had not utilized their resources to reduce the need for general assistance. Since need of assistance is the

only permissible criterion for eligibility, the municipality may not examine the circumstances which caused the need. Blouin v. City of Rockland, supra. Therefore, denial on the ground that Plaintiffs had misused funds was also improper.[2] The Court holds that the FHA's denial of the Plaintiffs' April 13 application for general assistance was contrary to the State General Assistance Statute, 22 M.R.S.A. § 4450 et seq.

2. Application of April 23, 1982

At the fair hearing, evidence regarding the Plaintiffs' April 23 application was presented. The FHA refused to decide whether denial of this application was proper on the grounds that Mrs. Gregory had not returned to the Municipal Office on April 26, 1982. Plaintiffs' subsequent request for a fair hearing was also denied.

A review of the record and the fair hearing transcript indicates that the Gregorys applied, both orally and in writing, for general assistance on April 23, 1982, and that assistance was denied. Plaintiffs are entitled to a review of this decision by the FHA. 22 M.R.S.A. § 4507. The FHA must determine whether the Plaintiffs exhibited an immediate need of assistance on April 23, 1982, and must grant assistance if a need is found. The Court therefore concludes that the FHA improperly refused to consider Plaintiffs' appeal and improperly refused to hold a further hearing on this appeal.

---

[2] Mrs. Gregory used her welfare funds to obtain her husband's release from jail only after she was assured by town officials that such use would not effect her eligibility for general assistance. It is therefore also inequitable for the town to deny benefits on the basis that the Gregorys misused funds.

This matter must be remanded to the FHA for a determination of Plaintiffs' need at the time of their application.

B. Procedural Violations

The procedures for administering general assistance programs are set forth in 22 M.R.S.A. §§ 4504, 4505, 4507 and in the Pittsfield General Assistance Rules and Regulations (Rules). Pursuant to those procedures, a decision concerning the applicants' eligibility must be made within 24 hours after an application is submitted. 22 M.R.S.A. § 4504(3)(C); Rules § 104.5. The applicant must be notified, in writing, of the decision, the reason for the decision, and notified of the right to a fair hearing. § 4505; Rules § 104.5. Any person whose application is denied is entitled to a fair hearing. § 4507; Rules § 108.1. The hearing must be held within 7 days of receipt of the request for a hearing. § 4507; Rules § 108.3.

Contrary to the applicable statutes and regulations, it is the town's policy not to provide applicants with a written decision unless the applicant appears and submits a request at the Municipal Office. The Plaintiffs were not provided with a written decision of the action on their April 13 and April 23 applications. The FHA refused to consider the Plaintiffs' appeal from the April 23 decision. Plaintiffs' subsequent request for a further hearing on the April 23 application was denied. The Court finds that the Defendants' actions flagrantly violated the statutory procedures for the administration of the general assistance program.[3]

[3]The actions of the Defendants are clearly not in conformity with the spirit or the letter of the applicable statutory provisions and regulations. Similar activities have previously been dealt with

C. Amendment of General Assistance Rules

In Count IX of their complaint, the Plaintiffs contend that Ordinance No. 82-13[4] which amends the General Assistance Rules violates the State General Assistance laws because it denies benefits on grounds unrelated to need. The Court does not reach this issue because Plaintiffs have suffered no injury from the passage of the ordinance. The ordinance was adopted after the Plaintiffs had applied for benefits; Plaintiffs were not denied assistance on the basis of the ordinance; and the ordinance cannot be applied to this case on remand. There is no statutory provision which entitles Plaintiffs to review the validity of a general assistance ordinance in the absence of its application to their case. Furthermore, since Plaintiffs have suffered no injury from the mere passage of the ordinance, they have no standing to challenge its validity. Count IX of the amended complaint must be dismissed.

II.

MOTION FOR SUMMARY JUDGMENT ON § 1983 CLAIMS

A. Procedural Due Process

The Plaintiffs contend that Defendants' failure to provide a written decision and failure to hold a fair hearing violates the Plaintiffs' 14th Amendment Due Process Rights. Goldberg v. Kelly, 397 U.S. 254 (1970); Alexander v. Silverman, 356 F.Supp. 1179

in a consent decree involving the Town of Pittsfield. Grass v. Commissioner of the Department of Human Services, Civil Action, Docket No. 79-31-SD (D.C. Me.) Consent Decree between Plaintiff Shirley Dunton and Defendants Richard Plante and Town of Pittsfield, (March 31, 1980).

[4]See Note 1, supra.

(E.D. Wisc. 1973) Baker Chaput v. Cammett, ( ) F.Supp. 1134 (D.N.H. 1976). In Alexander, the Court set out the minimal elements necessary to ensure that claimants due process rights are protected:

> 1. A written statement containing the reasons for denying the applicant's request for general relief and informing the applicant of his right to a timely and impartial administrative hearing.
>
> 2. A hearing on request...
>
> . . . .
>
> 5. A brief written statement after the hearing indicating the reasons for the final determination and the evidence relied upon. Id. at 1181-2.

The Defendants' failure to give Plaintiffs written notice of the reasons for the denial of their applications of April 13, 1982 and April 23, 1982; Defendants' failure to give Plaintiffs written notice of their right to a fair hearing; and Defendants' refusal to schedule a fair hearing following Plaintiffs' written request for a hearing on May 7, 1982 deprived Plaintiffs of rights protected by the Due Process Clause of the 14th Amendment. The Court holds that Plaintiffs are entitled to summary judgment on the due process claim raised in Count IV of their amended complaint.

B. First Amendment Claims

In Count VIII of their amended complaint, Plaintiffs allege that they were denied general assistance based on their public complaints about police misconduct and that denial on this basis violated Plaintiffs' First Amendment right to freedom of speech. In Count X Plaintiffs allege that Defendants' refusal to permit Mrs. Gregory to speak at a public hearing violates her right to free speech. After reviewing the memoranda and record in this case, the Court finds that factual issues remain for determination

with respect to these claims and therefore, Plaintiffs' motion for summary judgment is denied.

Upon the foregoing, it is hereby ORDERED and DECREED that:

Plaintiffs' appeal is SUSTAINED. The decision of the Pittsfield Fair Hearing Authority dated April 30, 1982 is REVERSED. This matter is REMANDED to the Fair Hearing Authority with instructions to grant the Plaintiffs the assistance requested in their application dated April 13, 1982.

The Fair Hearing Authority is ORDERED to make a determination as to Plaintiffs' need for assistance at the time of their application dated April 23, 1982, and to grant Plaintiffs assistance in the amount of the need found.

It is further ORDERED and DECREED that:

Plaintiffs' motion for summary judgment is GRANTED as to Count IV of the amended complaint. The issue of damages and attorneys fees shall be determined after further hearing.

Plaintiffs' motion for summary judgment on Count VIII and Count X is DENIED.

Count IX of the amended complaint is DISMISSED.

Dated: February 11, 1983

Horton A. Brody
Justice, Superior Court

REC'D & FILED

JUL 22 1983

SOMERSET COUNTY
ESTHER L. WATERS

STATE OF MAINE
Somerset, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-82-101

CINDY GREGORY
and TIM GREGORY

Plaintiffs

v.

GENE MOYERS and
TOWN OF PITTSFIELD

Defendants

ORDER ON MOTIONS OF DEFENDANTS FOR SUMMARY JUDGMENT AND FOR DISMISSAL

This matter is before this Court on Motions of Defendants for Summary Judgment and to Dismiss in a case brought under Rule 80B M.R.Civ.P., 22 M.R.S.A. § 4450 et seq., and 42 U.S.C. § 1983, concerning denial of certain welfare benefits to Plaintiffs by Defendant Town and other alleged violations of Plaintiffs' rights.

In a February 11, 1983 Decision and Order, this Court sustained the Rule 80B and Title 22 appeal in part, and remanded that portion of the case back to the Town to grant certain welfare assistance and determine need for certain other assistance (Counts I, II, III, V, VI and VII of the amended complaint). Count IX was dismissed. The Decision and Order also dealt with the claims brought under 42 U.S.C. § 1983, based on alleged violations of Plaintiffs' constitutional rights (Count IV, 14th Amendment rights to due process, and Counts VIII and X,

1st Amendment rights to freedom of speech). On Motion of Plaintiffs for Summary Judgment this Court determined that factual issues remained in dispute on the 1st Amendment claims and denied Plaintiffs' Motion for Summary Judgment on Counts VIII and X, leaving those for factual determinations by a factfinder.

The Court granted Summary Judgment in favor of Plaintiffs on Count IV of the amended complaint, concluding that Defendants' failure to provide a written decision and to hold a fair hearing violated Plaintiffs' 14th Amendment due process rights. The Court deferred the issue of damages and attorney's fees on Count IV to a later time.

Subsequent to the Decision and Order, the Town of Pittsfield complied with the Order and provided the welfare assistance to Plaintiffs which had been previously denied. This would seem to dispose of the Rule 80B M.R.Civ.P. and Title 22 portions of the complaint.

Also subsequent to the Decision and Order, Maine's Law Court decided the case of Jackson v. Inhabitants of the Town of Searsport, 456 A.2d 852 (Me. 1983). That case involved the Town of Searsport's failure to follow statutory procedures in processing Plaintiff's request for general welfare assistance and held that such violation in that case did not reach the

level constituting a deprivation of a property interest of Plaintiff Jackson, and even if it had involved such a deprivation, because Jackson had available to him state procedure (i.e. judicial review) to remedy the wrongs which he suffered, that procedure satisfied the constitutional 14th Amendment requirements of due process. The Court held that Jackson had no valid claim under Section 1983 of 42 U.S.C. and therefore was not entitled to attorney fees under Section 1988.

There are differences between the facts in Jackson, supra, and what happened in this case. In Jackson, the Law Court noted that the evidence in the record indicated good faith, although intentional as opposed to negligent conduct, on the part of the town in denying benefits to plaintiff. Here, this Court found that Defendants "flagrantly violated the statutory procedures for the administration of the general assistance program." In Jackson, the plaintiff was a first time applicant for general assistance, while in this case Plaintiffs had been receiving general assistance. This could make a difference as to whether Plaintiffs were deprived of a constitutionally protected property interest, as is required by the 14th Amendment in order to trigger the applicability of the due process clause, or whether the deprivation involved procedure only. Jackson, supra, page 857 and n. 19 on page 857.

In Jackson, the Plaintiff was in court within 16 days of the filing of his first application for general assistance. Here Plaintiffs filed their complaint within 17 days of the date of the application for general assistance not acted upon by the Town. It was that complaint which led to the action of remand and the granting of the benefits to Plaintiffs. Thus, even if Plaintiffs in this case were held to have been denied a property right by Defendants, as opposed to a denial of applicable procedural safeguards, that denial was in derogation of the established general assistance statutory procedure established by state statute, and the procedure available to Plaintiffs to redress the wrong done to them, i.e. judicial review in the state court, afforded to Plaintiffs adequate due process. Jackson, supra. Therefore, under Jackson, Plaintiffs have no cognizable claim as set out in Count IV under Sections 1983 and 1988 of 42 U.S.C. This Court, therefore, must amend that portion of its previous Decision and Order, dated February 11, 1983, so as to deny Motion of Plaintiffs for Summary Judgment on Count IV of the amended complaint, and grant in part Motion for Summary Judgment of Defendants on Count IV.

The decision in Jackson v. Inhabitants of the Town of Searsport does not address claims asserted under the First Amendment to the United States Constitution, and therefore has

no effect on this Court's prior Decision and Order pertaining to Counts VIII and X of Plaintiffs' amended complaint. The Motion of Defendants for Summary Judgment as to Counts VIII and X must therefore be denied.

It is Ordered:

Motion of Defendants for Summary Judgment is granted in part and denied in part. Motion granted as to Count IV of Plaintiffs' amended complaint. Motion denied as to Counts VIII and X. Decision and Order of this Court, dated February 11, 1983, is so amended.

Motion of Defendant to Dismiss further claims of Plaintiffs is granted in part and denied in part. Motion granted as to Count IV of Plaintiffs' amended complaint. Motion denied as to counts VIII and X. Count IV is dismissed with prejudice.

Dated: July 21, 1983

Robert W. Clifford
Justice, Superior Court

APPENDIX J

STATE OF MAINE
SOMERSET, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-82-101

CINDY GREGORY and TIM GREGORY, both of Pittsfield, County of Somerset, State of Maine,

Plaintiffs

v.

GENE MOYERS, individually and in his official capacity as Overseer of the General Assistance Program for the Town of Pittsfield, County of Somerset, State of Maine

and

TOWN OF PITTSFIELD, County of Somerset, State of Maine,

Defendants

PLAINTIFFS' FIRST AMENDED COMPLAINT

INTRODUCTION

1. This is a civil action brought pursuant to Rule 80B of the Maine Rules of Civil Procedure, and 42 U.S.C. §1983, to review Defendants' denial of general assistance to Plaintiffs. Jurisdiction is conferred on this Court by 4 M.R.S.A. §105. Plaintiffs seek judicial review of Defendants' refusal to provide general assistance to the Plaintiffs. Plaintiffs challenge the administration of the general assistance program on the grounds that it violates Maine's General Assistance statutes, 22 M.R.S.A. §4450 et seq., deprives Plaintiffs of their rights to due process and equal protection of the laws as guaranteed by the 14th Amendment to the United States Constitution, and violates Plaintiffs' rights under the 1st Amendment to the United States Constitution.

2. Plaintiffs Cindy Gregory and [illegible] Gregory are and have been at all relevant times hereto residents of the Town of Pittsfield. They have no income at the present time aside from AFDC in the amount of $301.00, food stamps, and general assistan They have two children together, Christopher, age 14 months, and Patrick, age 2 and 1/2 months. They also have custody of Plaintiff Cindy Gregory's son, David, age 4.

3. Defendant Town of Pittsfield is a duly incorporated municipality of the State of Maine obligated to provide municipa general assistance to eligible persons pursuant to 22 M.R.S.A. §4450 et seq.

4. Defendant Gene Moyers is the Town Manager of the Town of Pittsfield. His official duties include those of the Oversee of the Poor. He has been and continues to be responsible for th administration of the Town's General Assistance program pursuant to 22 M.R.S.A. §4505.

FACTS

5. On or about April 6, 1982, Plaintiffs applied for gener assistance to pay for their rent and the Town paid $65.00 to the Carriage Inn Motel as payment of one week's rent.

6. On or about April 8, 1982, Plaintiff Tim Gregory was arrested on an old traffic ticket and placed in jail in Bangor; Plaintiffs used their AFDC check to pay the $300.00 fine in orde to secure Plaintiff's release.

7. On or about April 8, 1982, Plaintiff Cindy Gregory was subjected to unwanted sexual advances by a police officer employed by the Town of Pittsfield.

8. On or about April 9, 1982, Plaintiffs complained to the Chief of Police of the Town of Pittsfield about the conduct of the police officer.

9. On or about April 13, 1982, Plaintiff Cindy Gregory agai went to Defendants to request general assistance. She was informed that she would not receive general assistance until the complaint she made to the Chief of Police was settled. Plaintif were not given a written decision on their application.

10. Plaintiff Cindy Gregory requested a fair hearing, but was informed that the hearing would not be held until the complaint made to the Chief of Police was settled.

11. Plaintiffs requested to speak with Defendant Moyers several times concerning their general assistance, but Defendant Moyers refused to see them and Defendants only scheduled the fair hearing after being brought to court on a motion for a Temporary Restraining Order.

12. During this period of time, Plaintiffs rented an apartment from the Carriage Motor Inn, and the manager repeatedly threatened to lock Plaintiffs and their children out of their apartment because the rent had not been paid. Counsel for Plaintiffs spoke to the manager on April 22, 1982 and he agreed to refrain from taking any action pending the outcome of the hearing scheduled for April 23, 1982.

13. A fair hearing was held on April 28, 1982 before the Pittsfield Fair Hearing Authority, which rendered a decision unfavorable to the Plaintiffs dated April 30, 1982. A copy of that decision appears as Plaintiffs' Exhibit A and is incorporate herein by reference.

14. On or about May 18, 1982, Defendant Town of Pittsfield, in response to the circumstances of Plaintiffs, passed Ordinance Number 82-13, which appears as Plaintiffs' Exhibit B, and which is incorporated herein by reference.

15. Plaintiff Cindy Gregory attempted to speak at the public hearing concerning Ordinance Number 82-13, but Defendant Town of Pittsfield denied her the opportunity to speak at the hearing.

16. Plaintiffs requested emergency assistance for food and rent from Defendants on April 23, 1982, and Defendants failed to make a written determination on Plaintiffs request for assistance.

17. Plaintiffs requested a fair hearing based on Defendants' failure to act on Plaintiffs request of April 23, 1982 for emergency assistance, and Defendants refused in writing, to schedule a fair hearing.

18. Defendant Moyers was acting recklessly, maliciously, and in bad faith with respect to all of his actions taken with respect to Plaintiffs herein.

19. Unless Plaintiffs are afforded immediate relief, they and their infant children will suffer irreparable harm in being deprived of basic necessities during the pendency of this litigation.

20. Plaintiffs have no adequate remedy at law.

COUNT I

21. Defendants' failure to properly accept Plaintiffs' applications for general assistance benefits violates Plaintiffs' rights as protected by 22 M.R.S.A. §4497 and the Pittsfield Town Ordinance, Article 16, Section 103.4.1.

COUNT II

22. Defendants' failure to render a decision on Plaintiffs' applications within 24 hours was in violation of Plaintiffs' rights as protected by the General Assistance statute, 22 M.R.S.A. §4507, and by the Pittsfield General Assistance Ordinance, Article 16, Sections 101.5 and 103.43.

COUNT III

23. Defendants' failure to schedule a hearing within 7 days of the date of the request for a fair hearing violates Plaintiffs' rights as protected by the General Assistance statute 22 M.R.S.A. §4507, and by the Pittsfield Town Ordinance, Article 16, Section 101.5.

COUNT IV

24. Defendants' failure to make a written decision within 24 hours of the date of application, and Defendants' failure to schedule a fair hearing within 7 days of the date of the request therefore deprive Plaintiffs of rights protected by the due process clause of the 14th Amendment to the United States Constitution.

COUNT V

25. Defendants' denial of general assistance benefits to Plaintiffs on grounds unrelated to need violates Plaintiffs'

rights as p[illegible]tected by 22 M.R.S.A. §§4[illegible] (2) and 4497, and the decisions of the Maine Supreme Judicial Court in Page v. City of Auburn et al, Law Docket No. Law-81-275 (2-3-82); and Beaulieu v. City of Lewiston et al, Law Docket No. Law-81-99.

COUNT VI

26. The termination of Plaintiffs' general assistance benefits without prior notice and hearing violates Plaintiffs' rights under 22 M.R.S.A. §4507.

COUNT VII

27. The decision of the Fair Hearing Authority dated April 30, 1982 is arbitrary, capricious, and not supported by substantial evidence.

COUNT VIII

28. Defendants' denial of assistance to Plaintiffs based on their public complaints about police misconduct violated Plaintiffs' rights to free speech as protected by the 1st Amendment to the United States Constitution.

COUNT IX

29. Ordinance Number 82-13 violates Plaintiffs' rights by denying benefits on grounds unrelated to need, in contravention of 22 M.R.S.A. §§4450 (2) and 4497, and the decisions of the Maine Supreme Judicial Court in Page v. City of Auburn et al, Law Docket No. Law-81-275 (2-3-82); and Beaulieu v. City of Lewiston et al, Law Docket No. Law-81-99.

COUNT X

30. Defendants' refusal to permit Plaintiff Cindy Gregory to speak at a public hearing violates her rights to free speech as protected by the 1st Amendment to the Unites States Constitution.

WHEREFORE, Plaintiffs pray for the following relief:

1. That this Court issue a preliminary injunction requiring Defendants to provide assistance to Plaintiffs sufficient to meet their basic needs until such time as Plaintiffs are found to be otherwise ineligible for general assistance.

2. That this Court issue a declaratory judgement pursuant to 14 M.R.S.A. §§5951 et seq. that Defendants' general assistance program is administered in violation of the United States Constitution and 22 M.R.S.A. §§4450 (2), 4497, and 4507.

3. That this Court issue a preliminary and permanent injunction requiring Defendants to administer their general assistance program in conformance with the due process clause of the fourteenth amendment to the United States Constitution and 22 M.R.S.A. §§4450 et seq.

4. That this Court award Plaintiffs $4,000.00 in actual damages and retroactive benefits and $2,000.00 in punitive damages.

5. That this Court award Plaintiffs reasonable attorney fees for the prosecution of this action pursuant to 42 U.S.C. §1988.

PINE TREE LEGAL ASSISTANCE, INC.

By: Linda Christ

Linda Christ
Attorney for Plaintiffs
P.O. Box 2429
Augusta, Maine 04330
Tel: 622-4731

Date: June 3, 1982

APPENDIX 4

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITITION

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1988

Proceedings in vindication of civil rights; attorney's fees.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985 and 1986 of this title, title IX of Public Law 92-318, or Title VI of the Civil Rights Act of 1964, the court, in its discretion may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

§4450. Definitions

As used in this chapter, unless the context indicates otherwise, the following words and terms shall have the following meanings.

1. Eligible person. "Eligible person" means a person who is qualified to receive general assistance from a municipality according to standards of eligibility determined by the municipal officers whether or not that person has applied for general assistance.

2. General assistance program. "General assistance program" means a service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families. A general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that the person has need and is found to be eligible to receive general assistance.

3. Net general assistance costs. "Net general assistance costs" means those direct costs incurred by a municipality in providing assistance to eligible persons according to standards established by the municipal officers and does not include the administrative expenses of the general assistance program.

4. Overseer. "Overseer" means an official designated by a municipality to administer a general assistance program. The municipal officers shall serve as a board of overseers if no other persons are appointed or elected.

§4504. Establishment of eligibility standards.

1. Program required; ordinance. A general assistance program shall be operated by each municipality and shall be administered in accordance with an ordinance enacted, after notice and hearing, by the municipal officers of each municipality.

2. Availability of ordinance. Each such ordinance shall be available in the town office and shall otherwise be easily accessible to any member of the public. Notice to that effect shall be posted.

3. Standards of eligibility. Each such ordinance shall establish standards of eligibility for relief. These standards shall:

A. Govern the determination of need of persons applying for relief and the amount of assistance to be provided to eligible persons;

B. Provide that all individuals wishing to make application for relief shall have the opportunity to do so; and

C. Provide the relief shall be furnished or denied to all eligible applicants within 24 hours of the date of submission of an application.

4. Ordinance filed. Each municipality shall present a copy of the ordinance establishing eligibility standards to the Commissioner of Human Services. Any amendment or modification of the municipal ordinance shall be submitted to the commissioner for filing.

5. Work requirement. A municipality may, by an ordinance enacted after notice and hearing, by its municipal officers, provide than an otherwise eligible person who is capable of working may be required to perform work for the municipality as a condition to receive general assistance. Any such work requirement shall be subject to the following provisions.

22 M.R.S.A. §4507

§4507. Right to a fair hearing.

Any person aggrieved with a decision, act, failure to act or delay in action concerning his application for general assistance under this chapter shall have the right to a fair hearing. If a person's application has been approved there shall be no revocation of general assistance during the period of entitlement until that person has been provided notice and an opportunity for hearing as provided in this section. After 24 hours from the time a person applies for general assistance, or immediately after a person receives notice that an approved application has been revoked, that person may request a hearing within 5 working days. A hearing shall be held by the municipality within 7 days following the receipt of a written request by the applicant for a fair hearing.

The hearing may be conducted by the municipal officers, a board of appeals created under Title 30, section 2411, or one or more persons appointed by the municipal officers to act as a fair hearing authority. In no event shall a hearing be held before the person or body responsible for the decision, act, failure to act or delay in action relating to the applicant.

The person requesting the hearing shall be afforded the right to confront and cross-examine any witness against him, present witnesses in his own behalf and be represented by counsel or other spokesman, and be advised of these rights in writing. The decision of such a hearing shall be based solely on evidence adduced at the hearing. The person requesting the hearing shall, within a reasonable time after the hearing, be furnished with a written decision detailing the reasons for that decision. Review of any action or failure to act under this chapter shall be pursuant to the Maine Rules of Civil Procedure, Rule 80-B.

OPPOSITION BRIEF

ORIGINAL

Supreme Court, U.S.
FILED
DEC 3 1984
ALEXANDER L. STEVAS
CLERK

No. 84-5720

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1984 TERM

CINDY GREGORY,

PETITIONER

VS.

TOWN OF PITTSFIELD

AND

GENE MOYERS,

RESPONDENTS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

Frank G. Chapman
Hiscock & Barclay
284 Water Street
P.O. Box 2028
Augusta, Maine 04330
(207) 623-4545

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STATEMENT OF THE CASE

Respondent Town of Pittsfield adopts as its Statement of the Case the statement set out in Gregory et al v. Town of Pittsfield, (Me) 479 A2d 1304 pages 1304 to 1306, Appendix 1 to Petition, pages 19-23. Note that this action was commenced after Respondent had received notice of a Fair Hearing schedule and the first Court order to Petitioner was to return to complete their administrative remedies. 479 A2d 1305. The events of April 23, 1982 as to Petitioner's request for assistance have been controverted from the beginning and have never been subject to determination by an evidentiary hearing. Respondent's version is that Petitioner requested emergency housing if evicted and Respondent made provision therefor, hence no denial of the assistance requested.

REASONS FOR DENYING WRIT

Petitioner misconceives the thrust of the statutory provisions of Maine law applicable to Municipal General Assistance.

The question posed by Petitioner is:

WHETHER A QUALIFIED APPLICANT FOR A STATUTORY ENTITLEMENT HAS A RIGHT TO NOTICE AND AN OPPORTUNITY TO BE HEARD UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Maine statutory law as it relates to Municipal General Assistance Programs as they existed at the time of inception of this case, 22 M.R.S.A. Sections 4450-4508, though it has since been repealed and replaced,[1/] provided for a welfare program designed to meet the immediate needs of persons who are unable to provide the basic necessities essential to maintain themselves or their families. See Section 4450(2) Petitioner's Appendix 4 page 53. It is not a program, such as AFDC, where, once a person qualifies, the benefits continue until such time as that person no longer remains qualified for the benefits. Each application under the Municipal General Assistance Program is a de novo application for a limited period. See 22 M.R.S.A. Section 4497.

At the time a person applies for assistance, the Town officials responsible for administering the program must do two things, 1) determine whether the applicant is presently qualified to receive the aid and 2) if qualified, the amount and type of aid the applicant presently needs. See Section 4450(2). That section goes on to state that the general assistance is not a continuing "grant in aid" or a "categorical" welfare program. The section, cited above, then reemphasizes that the general assistance program is for immediate aid, for a limited time, for a defined need, to an eligible applicant.

The reason for belaboring the elements of municipal general assistance programs in Maine is solely because Petitioner mis-

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1/ Now 22 M.R.S.A. Sections 4301-4324

conceives the nature of such programs as evidenced by the questions posed to the Court.

An applicant in Maine for general assistance is not qualified until a determination for such has been made on the basis of the application and an interview. Once a person qualifies, the qualification is only in effect for the aid given and does not carry forward to the next application. Hence, the property right, if one is then created, is only for the aid then given. If a person is found "not qualified" upon any application a review procedure is provided by statute, see Section 4507, at Petitioner's Appendix A, pg. 55.

This "qualified applicant" in petitioner's question is a misnomer. Certainly no person can be considered, under the Maine statute, as qualified until a decision has been made on the application. If the Petitioner means that a person found qualified after filing an application then acquires a property right status that relates back to the time of filing the application that situation creates an insoluble due process question which flies in the face of the statute and even in the face of Goldberg v. Kelly, 397 U.S. 254 upon which Petitioner so heavily relies. Goldberg, supra, does not stand for the proposition that an applicant possesses a right sufficient to invoke the protection of the due process clause before that person acquires a property right in the entitlement program. Thus, under the Maine Municipal General Assistance statute there is no qualified "applicant" only a qualified "recipient".

This brings up the second problem with the first question and that is the phrase "statutory entitlement". This phrase fits better in the categorical aid programs where true entitlement formulae are used. In general assistance the object is to provide the applicant with what is needed immediately as dictated by the then circumstances. Under categorical entitlement programs as now known and operated, once the applicant's status is determined the program provides a spectrum of aid. In general assist-

ance the aid is dictated by the specific need, e.g., a person may need shelter or medical assistance, not necessarily food. The entitlement, if any, is directly determined by the immediate need as reflected in processing the application.

The Petitioner would have the Court give a narrow and restricted interpretation to Parratt v. Taylor, 451 U.S. 527. Petitioner's requested interpretation would, in effect, have the Court find that an applicant for welfare assistance has a property right in the statutory process by which such assistance is meted out. In other words, errors and mistakes in administration would be not only subject to statutory appeal and redress procedures but would also be Section 1983 violations in and of themselves.

Such a contention flies in the face of Parratt, supra. At page 543 of 451 U.S., Parratt states:

> "Application of the principles recited above to this case leads us to conclude the respondent has not alleged a violation of the Due Process Clause of the Fourteenth Amendment. Although he has been deprived of property under color of state law, the deprivation did not come as a result of some established state procedure. Indeed, the deprivation occurred as a result of the unauthorized failure of agents of the State to follow established state procedure. There is no contention that the procedures themselves are inadequate nor is there any contention that it was practicable for the State to provide a predeprivation hearing."

The State of Maine anticipated that there may be times when municipal administrators would misinterpret state statutory procedures or municipal ordinances in the assistance area or that their prejudices might get in their way and, therefore, established an elaborate review procedure and a judicial review procedure for applicants who might be aggrieved, for any reason, with respect to a decision on their general assistance application. See in particular 22 M.R.S.A. Section 4507, Petitioner's Appendix A, pgs. 55-56.

In the instant case this is just what happened and the Superior Court corrected the error by an order dated Feb. 11, 1983, see 479 A2d 1304, 1306, Petitioner's Appendix 1, pg. 22.

Petitioner at page 9 of her petition attempts to demonstrate that "applicants for various forms of government largesse who

claim that they meet the statutory requirements therefor may possess a protected property interest in the benefits which are sought..." However, the cases cited are cases of licenses, permits and the like where the applicant already has the property right while the governmental entity possesses only the power to regulate the manner in which the property right may be exercised. Such is not the case with the Municipal General Assistance Program in Maine. To equate general assistance with building permits, drivers licenses and business licenses and permits in respect to property rights that exist at the time of application is simply to misconceive the nature of the general assistance programs, and the teachings of Goldberg v. Kelly, supra.

Respondent submits that Petitioner similarly misconceives the issue by assuming a municipal policy of refusing to provide various statutory notices. The fact of the matter is that the Town had adopted an ordinance as required by 22 M.R.S.A. Sec. 4504, having Sec. 4507 appeal procedures. This is the basis of the Superior Court's order of April 23, 1982 directing Petitioner to return to the Town to exhaust their administrative remedies.

At page 12 of the petition the Petitioner seems to be stating that Parratt, supra, is inapplicable where a statute creates a benefit and a system of administrative review if the administrator fails to comply with notice requirements of the review procedure. But Parratt clearly states that if the procedures are adequate to protect property rights, the unauthorized failure of the agents to follow the procedures do not trigger Sec. 1983 violations.

In this case the statutory due process procedures on appeal corrected the petitioners grievances. The Supreme Judicial Court was correct when it held at 479 A2d at 1308:

> "Where state law provides adequate redress to a plaintiff deprived of a constitutionally protected property interest, no section 1983 action will lie."

CONCLUSION

For the reasons stated the Petition for Certiorari to review the judgment and opinion of this Maine Supreme Judicial Court in Gregory v. Town of Pittsfield et al 479 A2d 1304 should be denied.

Dated: November 30, 1984.

Respectfully submitted,

Frank G. Chapman
Counsel for Respondents

OPINION

SUPREME COURT OF THE UNITED STATES

CINDY GREGORY *v.* TOWN OF PITTSFIELD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

No. 84–5720. Decided February 25, 1985

The petition for a writ of certiorari is denied.

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

This petition raises important and unresolved issues concerning the protection afforded by the Due Process Clause of the Fourteenth Amendment to applicants for general assistance. Because the decision below relies on a questionable reading of this Court's precedent to hold that such applicants are entitled to no procedural safeguards whatsoever and, alternatively, that state law remedies provide sufficient due process, I would grant certiorari.

Petitioner Cindy Gregory and her husband on April 13, 1982, filed an application with respondent town of Pittsfield, Maine, seeking general assistance in order to pay their rent. The town manager, respondent Gene Moyers, denied this request on the grounds that Mrs. Gregory had quit her job and had spent an AFDC check to obtain her husband's release from jail. Contrary to the requirements of state law, Moyers did not provide a written notice of this decision informing Mrs. Gregory of her right to an administrative hearing.[1] Mrs. Gregory unsuccessfully requested assistance

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[1] The general assistance statute in effect at the time required that a decision concerning an applicant's eligibility be made within 24 hours after an application was submitted. Me. Rev. Stat. Ann., Tit. 22, § 4504(3)(C) (1980). Furthermore, the statute required that an applicant be provided written notice explaining the reasons for the decision and the right to an administrative hearing. § 4505. The administrative hearing was to be held within 7 days of receipt of a written request for a hearing. § 4507.

again on April 16. On the morning of April 23, she filed an action in the Superior Court of Somerset County, State of Maine, requesting a temporary restraining order against the town's denial of general assistance. The court directed Mrs. Gregory to exhaust the administrative hearing procedure established by Me. Rev. Stat. Ann., Tit. 22, § 4507 (1980), and instructed the town's hearing authority to follow the decision of the Maine Supreme Court in *Page* v. *City of Auburn*, 440 A. 2d 363 (1982), which held that voluntary termination of employment is not a valid ground for denying general assistance. On the afternoon of April 23, Mrs. Gregory went to the Pittsfield Municipal Office and filed written requests for general assistance and for an administrative hearing on the denial of her April 13 application. The request for assistance was denied, and the town again failed to provide Mrs. Gregory with written notice of the decision. On April 29, 1983, the town's hearing authority upheld the denial of benefits requested on April 13 and refused to review the denial of the April 23 application.

Thwarted in her efforts to obtain assistance, Mrs. Gregory then filed an action in Superior Court requesting review of the hearing authority's decision pursuant to state law and also seeking relief under 42 U. S. C. § 1983 for alleged constitutional deprivations. The Superior Court held that Mrs. Gregory was entitled to an award of assistance based on the April 13 application and that the town's hearing authority had violated statutory requirements by refusing to hold a hearing on her April 23 application. Moreover, the court found that the town's policy was not to provide applicants with a written decision unless the applicant went to the Municipal Office and submitted a request. This policy, along with the refusal to hold a hearing on the April 23 application,

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Maine has since replaced its previous general assistance statute. 1983 Me. Acts, ch. 577, § 1. See Me. Rev. Stat. Ann., Tit. 22, §§ 4301–4324 (Supp. 1983–1984). The new provisions also contain requirements for written notice of a right to hearing. See §§ 4321, 4322.

"flagrantly violated the statutory procedures for the administration of the general assistance program." App. 2 to Pet. for Cert. 35 (footnote omitted). The Superior Court further found that the town's failure to provide Mrs. Gregory written notice of her right to a hearing to review the denial of benefits and the subsequent refusal to conduct such a hearing constituted a denial of due process in violation of the Fourteenth Amendment. Before damages were determined with respect to the due process claim, the Superior Court amended its earlier decision in light of *Jackson* v. *Inhabitants of Town of Searsport*, 456 A. 2d 852 (Me.), cert. denied *sub. nom. Jackson* v. *Handley*, 464 U. S. —— (1983), to hold that petitioner did not have a cognizable claim of a denial of due process. Consequently, the court dismissed with prejudice Mrs. Gregory's § 1983 claim.

The Maine Supreme Judicial Court affirmed the dismissal of the § 1983 claim on alternative grounds. 479 A. 2d 1304 (1984). First, the state court noted that under state law, general assistance grants are made on the basis of a specific determination of need. Recipients are not eligible for continued payments simply on the basis of prior benefits, but instead must make a *de novo* showing of eligibility to obtain each particular grant. Me. Rev. Stat. Ann., Tit. 22, § 4450(2) (1980). This fact, the Supreme Judicial Court concluded, implies that an applicant for general assistance does not have a property interest in benefits until he or she is found eligible to receive such assistance. "Without this determination, an applicant, no matter what his financial status, has no more than an abstract expectancy of benefits, which in no case can rise to the level of a constitutionally protected property right." 479 A. 2d, at 1308. In the alternative, the Supreme Judicial Court held that even if Mrs. Gregory was entitled to the protections of due process, *Parratt* v. *Taylor*, 451 U. S. 527 (1981), indicated that state procedures afforded all the process due. 479 A. 2d, at 1308–1309. Under state law, unsuccessful applicants for assistance are

entitled to an administrative hearing and judicial review. Pursuant to those provisions, after the Superior Court issued its first decision in February 1983, the town awarded Mrs. Gregory the assistance that it had denied the previous April. See *id.*, at 1306, n. 2. Relying on its decision in *Jackson* v. *Town of Searsport*, *supra*, the Supreme Judicial Court concluded that state law remedies were adequate to compensate petitioner and her husband for any loss and thereby satisfied the requirements of due process. 479 A. 2d, at 1308.

The conclusion of the Supreme Judicial Court that an applicant for general assistance does not have an interest protected by the Due Process Clause is unsettling in its implication that less fortunate persons in our society may arbitrarily be denied benefits that a State has granted as a matter of right. There is no dispute that Mrs. Gregory was entitled under Maine law to the general assistance benefits denied to her in April 1982. We have held that state statutes or regulations prescribing the substantive predicates for state action may create liberty interests protected by due process. *Hewitt* v. *Helms*, 459 U. S. 460, 470–472 (1983) (finding that prisoner had protected liberty interest in remaining in general prison population). One would think that where state law creates an entitlement to general assistance based on certain substantive conditions, there similarly results a property interest that warrants at least some procedural safeguards. Cf. *Greenholtz* v. *Nebraska Penal Inmates*, 442 U. S. 1, 12 (1979) (finding parole applicant's expectancy of release entitled to some measure of constitutional protection). Although this Court has never addressed the issue whether applicants for general assistance have a protected property interest, see *Peer* v. *Griffeth*, 445 U. S. 970 (1980) (REHNQUIST, J., dissenting from denial of certiorari), the weight of authority among lower courts is contrary to the conclusion of the Supreme Judicial Court. See, *e. g.*, *Daniels* v. *Woodbury County, Iowa*, 742 F. 2d 1128, 1132–1133 (CA8 1984); *Griffeth* v. *Detrich*, 603 F. 2d 118, 120–121 (CA9 1979), cert. denied *sub nom. Peer* v. *Griffeth*, *supra*; *White* v. *Roughton*, 530 F. 2d 750, 755 (CA7 1976); *Johnston* v. *Shaw*, 556 F. Supp. 406, 412–413 (ND Tex. 1982). But see *Zobriscky* v. *Los Angeles County*, 28 Cal. App. 3d 930, 105 Cal. Rptr. 121 (1972).

Assuming that applicants for general assistance are entitled to some procedural safeguards, the Supreme Judicial Court further held that the statutory procedures afforded by state law provide sufficient process. This conclusion rests on a reading of *Parratt* v. *Taylor* that is more expansive than this Court previously has endorsed. *Parratt* held that a postdeprivation state tort action afforded all the process that was due to remedy a "tortious loss of . . . property as a result of a random and unauthorized act by a state employee." 451 U. S., at 541. See also *Hudson* v. *Palmer*, 468 U. S. ——, —— (1984) (applying *Parratt* to unauthorized, intentional deprivation of property by a state employee). The present case is far removed from the facts of *Parratt*, where prison employees negligently lost an inmate's mail-order hobby kit. In contrast, here the town of Pittsfield had a policy, contrary to the requirements of state law, not to provide written notice to applicants denied general assistance. If we assume, *arguendo*, that due process requires the provision of such notice, it is questionable whether *Parratt* suggests that a municipal policy denying those procedures comports with the Constitution so long as state law makes some remedy available. Cf. *Logan* v. *Zimmerman Brush Co.*, 455 U. S. 422, 435–436 (1982) (postdeprivation remedies do not satisfy due process where deprivation is caused by established state procedures).

Parratt reasoned that postdeprivation procedures may satisfy the requirements of due process in circumstances in which predeprivation process is impracticable. 451 U. S., at 539–541. In the context of unauthorized deprivations by individual state employees, the State cannot possibly provide a meaningful predeprivation hearing, and therefore adequate

postdeprivation state remedies may satisfy the procedural requirements of the Due Process Clause. *Id.*, at 541–542; see also *Hudson* v. *Palmer*, *supra*, at ——. This reasoning cannot readily be extended to the facts of the present case. First, the deprivation involved here did not result from the unauthorized conduct of individual employees, but instead reflected the town's policy. Second, the alleged denial of due process was not the town's failure to provide a hearing prior to denying the application for general assistance. Instead, petitioner complains of the town's refusal to provide her with notice explaining the decision and informing her of a statutory right to a hearing. It does not seem impracticable to insist that the town afford these minimal procedural protections.[2]

Even if the reasoning of *Parratt* applies in circumstances in which a municipal policy causes deprivations of protected property interests, it is by no means clear that the state-law remedies available in the instant case are adequate. The state procedures did allow Mrs. Gregory to obtain grants of general assistance nearly one year after her application was improperly denied. Those procedures, however, made no provision for the recovery of damages resulting from the town's failure to provide her with notice or a prompt hearing. Mrs. Gregory's complaint alleged that as a result of the town's actions, she and her children were forced to leave their home and to move to another town. Any state tort action against the town or responsible employees apparently would be barred by the immunity provisions of the Maine Tort Claims Act, Me. Rev. Stat. Ann., Tit. 14, §§ 8103, 8111 (1980). Although *Parratt* acknowledged that state remedies may be adequate even though they may not provide a plaintiff with as large a recovery as he might receive in a § 1983 action, 451 U. S., at 544, it would be a novel extension of that proposition to infer that eventual restoration of a property interest, no matter how belated, constitutes an adequate remedy for the intervening deprivation and any consequent damages. Cf. *ibid.* (noting that available state remedies could fully compensate for property loss).

[2] Indeed, the Superior Court noted that the town had previously entered into a consent decree related to its refusal to follow the procedural requirements of Maine's general assistance statute. *Grass* v. *Commissioner of Dept. of Human Servs.*, Civ. Action No. 79–31–SD (ME, March 31, 1980, App. 2 to Pet. for Cert. 6–7, n. 3).

By suggesting that an applicant for general assistance may arbitrarily be denied benefits, the holding below adopts a proposition not endorsed previously by this Court and in conflict with the decisions of several other courts. Moreover, our previous decisions do not easily support the conclusion below that if applicants are entitled to some procedural safeguards, postdeprivation procedures are sufficient to remedy a municipal policy of denying unsuccessful applicants a required written notice explaining their right to an administrative hearing. The reasoning of the Supreme Judicial Court is troubling in its general implications as well as its application in this case. Consequently, I respectfully dissent from the denial of certiorari.

JUSTICE POWELL took no part in the consideration or decision of this petition.